IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

David Pacheco, :

:

Appellant, :

: C. A. No.: N13A-05-002 (CHT)

:

V.

:

Unemployment Insurance

Appeal Board,

:

Appellee. :

OPINION AND ORDER

Upon Appeal From a Decision of the Unemployment Insurance Appeals Board

Submitted: September 5, 2013 Decided: October 21, 2013

James T. Wakley, Esquire, Delaware Department of Justice, Wilmington, Delaware; Attorney for Appellee

David Pacheco, pro se.

TOLIVER, JUDGE

Before the Court is an appeal by David Pacheco from a decision of the Unemployment Insurance Appeal Board. The Board affirmed the decision of the appeals referee and claims deputy and held that Mr. Pacheco failed to file a timely appeal of the claims deputy's decision. Mr. Pacheco disagrees with this decision. That which follows is the Court's resolution of the issues so presented.

STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

On February 27, 2013, Mr. Pacheco received three notices from a claims deputy of the Delaware Department of Labor informing him the department had determined he had made false statements and/or representations to obtain benefits. As a result, Mr. Pacheco received benefits to which he was not entitled totaling \$10,231.00 and would be required to repay that amount to the Department of Labor. Each notice contained a certificate of mailing identifying February 27, 2013 as the date of

mailing.¹ Additionally, the notice, in bold letters, advised Mr. Pacheco of his rights to file a written appeal of the aforementioned determinations on or before March 9, 2013.

Mr. Pacheco did file an appeal denying that he had been overpaid but he did not do so until March, 13, 2013. That appeal was reviewed by another claims deputy who, on March 18, 2013, rejected the appeal as untimely. Mr. Pacheco then took his dispute to an appeals referee who reviewed the matter on April 9. Three days later, on April 12, the appeals referee also denied his appeal as untimely. Shortly thereafter, Mr. Pacheco filed an appeal with the Board.

The Hearing

The Board heard the appeal on April 24, 2013.

T. Stewart² appeared on behalf of the Department of

 $^{^{1}}$ The notices respectively referenced overpayments to Mr. Pacheco in the amounts of \$8,583.00, \$990.00 and \$658.00. Each was dated February 27, 2013.

 $^{^{\ 2}}$ There is no further description of Ms. Stewart's first name.

Labor. She indicated that the three notices of determination were mailed to Mr. Pacheco's address of record and were not returned by the post office as undeliverable. Lastly, Ms. Stewart explained that because the last day that the appeal could have been filed was March 9, 2013 and was not filed until March 13, 2013, the appeal was untimely.

Mr. Pacheco appeared on his own behalf and presented testimony in support of his appeal. He testified that he never received the notices and confirmed that his address on record with the Department of Labor was accurate. His only explanation was that someone may have been tampering with his mailbox.

The Board's Decision

On April 24, 2013, the Board issued a written opinion affirming the result below and found that Mr. Pacheco's appeal was untimely. The Board ruled that there was no evidence of departmental error that prevented the Claimant from filing his appeals.

DISCUSSION

Standard of Review

This Court's review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence in the record to support the Board's findings, and that such findings are free from legal error. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. It has been defined as "more than a scintilla and less than a preponderance". An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.

Under 19 Del. C. § 3318(b):

[u]nless a claimant or a last employer

 $^{^3}$ Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan, 337 A.2d 308, 309 (Del. 1975).

⁴ Oceanport Indus. v. Wilm. Stevedores, 636 A.2d 892, 899 (Del. 1994).

 $^{^{5}}$ City of Wilmington v. Clark, 1991 WL 53441 (Del. Super. 1991).

⁶ Johnson v. Chrysler Corp., 213 A.2d 64, 66 (Del. 1965).

who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy's determination shall be final

The effect of § 3318(b) is that the decision of a Claims Deputy will become final where the failure to file a timely appeal is due to some action or inaction by the claimant and not due to an administrative error by an agency. Moreover, in Delaware, it is "presume[d] that a mailing properly addressed has been received by the intended claimant." A claimant's mere assertion that he or she did not receive the decision, "without supporting evidence is not sufficient to rebut this presumption."

 $^{^7}$ Sheppard v. GPM Investments, LLC, 2008 WL 193317, at *2 (Del. Super. Jan. 23, 2008) (citing Meacham v. UIAB, 2002 WL 442168 (Del.Super. Mar. 21, 2002)).

⁸ Cassello v. News Journal Co., 2010 WL 5825342, at *3
(Del. Super. Dec. 29, 2010) (citing Lively v. Dover Wipes Co.,
2003 WL 21213415, at *1 (Del.Super.)).

⁹ Cassello, 2010 WL 5825342 at *3 (citing Funk v. UIAB, 591 A.2d 222, 225 (Del. 1991)).

¹⁰ Id. (citing Martin v. Unemployment Ins. Appeal Bd., 2004 WL 772073, at *3 (Del.Super.)). See also Cherazard v. Perdue Farms, 2011 WL 1886885 (Del. Super. Apr. 28, 2011).

Here, Mr. Pacheco, under oath, confirmed his address of record. There was no evidence in the record to suggest that there was a departmental error which contributed to or proximately caused a delay in sending the notices resulting in the untimely filing of the instant appeal. His mere assertion that he did not receive the three notices of determination, without any supporting evidence, is not sufficient to rebut the presumption that they were received. Consequently, based upon the record in this case, substantial evidence exists to support the Board's decision and it is free from legal error.

CONCLUSION

For the foregoing reasons, the Court concludes that the decision of the Unemployment Insurance Appeals Board must be, and hereby is, affirmed.

IT IS SO ORDERED.

/S/ CHARLES H. TOLIVER, IV TOLIVER, JUDGE